



ILLINOIS COMMERCE COMMISSION

September 22, 2004

State of Illinois, Illinois Department of Transportation,
Petitioner,

v.

Elgin, Joliet & Eastern Railway Company,
Respondent.

T04-0068

Petition for an Order granting permission to construct a new highway underpass structure carrying the Elgin, Joliet & Eastern Railway Company's single mainline track over the realigned IL 22 in the Village of Lake Zurich, Lake County, Illinois.

Ms. Stacey C. Hollo
Illinois Department of Transportation
2300 South Dirksen Parkway, Room 300
Springfield, IL 62703

Dear Ms. Hollo:

Receipt is acknowledged of the original and two (2) copies of the Petition filed September 21, 2004 in the above matter.

All future correspondence/pleadings should be filed with an original and two (2) copies and addressed to: Mr. Dave Lazarides, Acting Director of Processing, Illinois Commerce Commission, 527 E. Capitol Avenue, Springfield, IL 62701 or you may file electronically through E-Docket if you have an account. To apply for an account, please log on to www.icc.state.il.us and apply for an E-docket account.

Processing and Information Section

kl

cc: Mr. Victor A. Modeer, IDOT
Mr. Ken Hay, EJE
Mr. Ray Baker, EJE
Village of Lake Zurich, President/Clerk

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL

RECEIVED
SEP 21 2004

Illinois Commerce Commission
RAIL SAFETY SECTION

STATE OF ILLINOIS)
ILLINOIS DEPARTMENT OF TRANSPORTATION,)
Petitioner,)

v.)

Docket No.

ELGIN, JOLIET & EASTERN RAILWAY COMPANY,)
Respondent.)

T04-0068

Petition for an Order granting permission to construct)
a new highway underpass structure carrying the Elgin,)
Joliet & Eastern Railway Company's single mainline)
track over the realigned IL 22 in the Village of Lake)
Zurich, Lake County, Illinois.)

PETITION

NOW COMES Petitioner, Illinois Department of Transportation ("Department"), by its attorney, Lisa Madigan, Illinois Attorney General, and states as follows:

1. The Respondent, Elgin, Joliet & Eastern Railway Company ("EJ&E"), whose address is 1 North Buchanan Street, Gary, Indiana 46402 is a rail carrier operating its lines of railroad in the State of Illinois.
2. In the Village of Lake Zurich, IL 22 (FAP Route 337) is a public street under the jurisdiction of the Department and is situated in close proximity to a single mainline track of the EJ&E.
3. IL 22 (FAP Route 337) is on the State System of Highways and also runs in a generally southwesterly to northeasterly direction through the Village of Lake Zurich, Lake County, Illinois.
4. Due to the Department's desire to improve the safety of the traveling public, the Department has developed plans to realign IL 22, which includes constructing a new highway underpass structure carrying the EJ&E's single mainline track over the realigned IL 22 in the Village of Lake Zurich, to be used by the statewide traveling public. More specifically, the proposed project site is located in the northwest one-quarter (NW¼) of Section 20, Township 43 North, Range 10 East of the Third Principal Meridian, in the Village of Lake Zurich, Lake County, Illinois.
5. The proposed grade separation structure is necessary to facilitate the flow of the traveling public, as well as, promote the safety and convenience of the traveling public.
6. The Department has developed plans to construct the proposed highway underpass structure. Said plans were prepared in accordance with applicable State and Federal guidelines. A copy of the plans for the proposed project is attached hereto as Exhibit 1 for the Commission's review.
7. The plans will require the EJ&E to perform certain work items associated with its railroad facilities impacted and/or affected by the proposed project as specified in the attached agreement (Exhibit 2).

DOCKETED

SEP 22 2004

8. The Department proposes that all work furnished by the EJ&E be done at the expense of the Department.
9. The Department accepts financial responsibility for 100% of the costs associated with constructing the proposed grade separation structure.
10. The Department proposes to assume future maintenance responsibilities for the proposed highway underpass structure, the retaining walls, the highway approaches, and all other highway facilities, except the railroad ballast, ties, rail, and railroad facilities, shall remain the responsibility of the EJ&E. In order for the Department to fulfill the proposed maintenance obligation, the Department must have access to the structure and retaining walls at all times, for the performance of inspections, repairs and maintenance.
11. The Department and the EJ&E have executed a written agreement providing for the construction of the proposed highway underpass structure carrying the single mainline track of the EJ&E over realigned IL 22.
12. A copy of said agreement is attached and marked as Exhibit 2 for the Commission's review.

WHEREFORE, THE PETITIONER PRAYS that the Illinois Commerce Commission find/order the following:

- A. That the attached agreement (Exhibit 2) be incorporated into the record;
- B. That the agreement fairly and reasonably sets out the division of work, expense and future maintenance involved in connection with the proposed project;
- C. That the requested construction as proposed in the agreement, is authorized; and
- D. That no hearing be deemed necessary in this regard.

Respectfully submitted,
ILLINOIS DEPARTMENT OF TRANSPORTATION

By: Lisa Madigan
Attorney General

By: Stacey C. Hollo
Stacey C. Hollo *LB*
Special Assistant Attorney General

Dated: September 21, 2004
Illinois Department of Transportation
Office of Chief Counsel
2300 South Dirksen Parkway, Room 300
Springfield, Illinois 62764
Phone (217) 782-0692

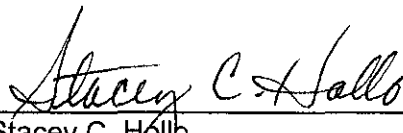
STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS)	
ILLINOIS DEPARTMENT OF TRANSPORTATION,)	
Petitioner,)	
)	
v.)	Docket No.
)	
ELGIN, JOLIET & EASTERN RAILWAY COMPANY,)	
Respondent.)	
)	
Petition for an Order granting permission to construct)	
a new highway underpass structure carrying the Elgin,)	
Joliet & Eastern Railway Company's single mainline)	
track over the realigned IL 22 in the Village of Lake)	
Zurich, Lake County, Illinois.)	

NOTICE OF FILING

TO: Ken L. Hay, EJ & E
James Krischke, Mayor
Gloria Palmblad, Clerk

PLEASE TAKE NOTICE that I have this 21st day of September 2004, forwarded to Mr. Dave Lazarides, Director of Processing, Transportation Division, of the Illinois Commerce Commission, Springfield, Illinois, for filing in the above matter, a Petition, a copy of each which are attached hereto and hereby served upon you.



Stacey C. Hollo *LB*
Special Assistant Attorney General
2300 South Dirksen Parkway
Room 311
Springfield, Illinois 62764
(217) 782-0692

Counsel for the Illinois
Department of Transportation

PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing instrument was served upon the addressees listed below by mailing a true and correct copy via first class mail, postage pre-paid and depositing the same in the United States Mail, Springfield, Illinois, this 21st day of September 2004:

Stacy C. Hallo HB

Ken L. Hay
Administrative Manager
Elgin, Joliet & Eastern Railway
1141 Maple Road
Joliet, IL 60432-1981

James S. Krischke
Mayor
70 E. Main St.
Lake Zurich, IL 60047

Gloria Palmblad
Village Clerk
70 E. Main St.
Lake Zurich, IL 60047

THIS AGREEMENT made and entered into by and between the STATE OF ILLINOIS, acting by and through its Department of Transportation, hereinafter referred to as the "STATE", and the ELGIN, JOLIET & EASTERN RAILWAY COMPANY, hereinafter referred to as the "COMPANY".

W I T N E S S E T H:

THAT, WHEREAS, the STATE proposes to construct FAP Route 337 (Illinois 22) along a relocated alignment which will intersect the COMPANY's single mainline track in the northwest one-quarter (NW ¼) of Section 20, Township 43 North, Range 10 East of the Third Principal Meridian, in the Village of Lake Zurich, Lake County, Illinois; and

WHEREAS, the STATE proposes to construct an underpass structure [Structure No. 048-0188] to carry the COMPANY's single mainline track over the proposed dual pavements of FAP Route 337 (Illinois 22) as shown on the prints of the general drawings marked Exhibit 1 (3 sheets), attached hereto and made a part hereof; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

SECTION 1. By separate document(s), arrangements will be made for the COMPANY to convey to the STATE any property rights necessary to construct the improvement as herein proposed.

SECTION 2. The STATE shall secure or cause to be secured, without expense to the COMPANY, all the right of way required for or incident to the construction of the underpass structure, retaining walls and the highway approaches thereto, including the temporary runaround track.

SECTION 3. The preliminary and detailed plans, specifications and special provisions for the highway underpass structure and retaining walls, the temporary runaround track, and the highway approaches thereto shall be prepared by or for the STATE at its expense; and all such plans, specifications and special provisions, affecting the interests of the COMPANY, shall be subject to approval by the COMPANY's authorized representative.

SECTION 4. The plans and estimates of cost for changes in the COMPANY's facilities and appurtenances on the COMPANY's right of way, as necessitated by the proposed improvement, shall be prepared by the COMPANY at the expense of the STATE; and all such plans and estimates shall be subject to approval by an authorized representative of the STATE.

SECTION 5. No changes shall be made on any approved plans, specifications or special provisions by either party hereto without the consent in writing of the other party.

SECTION 6. The parties hereto shall construct or cause to be constructed, in substantial accordance with the approved plans, specifications and special provisions, the following items of work:

- (I). WORK BY THE STATE. The STATE shall furnish or cause to be furnished, at its expense, all the labor, materials and work equipment required to perform and complete:

- (a). The preliminary engineering required for preparation of plans, specifications and special provisions as set forth in Section 3, and final engineering.
- (b). The construction of the embankment and placement of the sub-ballast for the temporary runaround track. The removal of the embankment, sub-ballast and ballast for the temporary runaround track, all as shown in Exhibit 1.
- (c). The construction of the highway underpass structure, retaining walls and highway approaches, as indicated on Exhibit 1.
- (d). Engineering and inspection as set forth in Section 9.
- (e). Incidental work necessary to complete the items hereinabove specified.

The STATE's work shall be awarded to a competent and experienced contractor(s) who has (have) adequate equipment, organization and finances, and the COMPANY shall be notified of the contractor(s) receiving such award for all work affecting the COMPANY's interest.

- (II). WORK BY THE COMPANY. The COMPANY shall furnish or cause to be furnished, at the expense of the STATE, and in accordance with the stipulations as contained in the Federal-Aid Policy Guide, Chapter I, Subchapter B, Part 140, Subpart I, (23 CFR 140I) and supplements, all the labor, materials and work equipment required to perform and complete:

- (a). All temporary and permanent alterations or relocations of communication and signal wire lines, signals and railroad appurtenances on its right of way as may be necessitated by the construction of the grade separation project.
- (b). The furnishing and placement of the ballast for the temporary runaround track, the construction of the temporary runaround track and the removal of the temporary runaround track and tie-ins to the permanent track, all as shown on Exhibit 1.
- (c). The removal of the existing track as required to permit the construction of the underpass structure and the later construction of the track on and adjacent to the underpass structure.
- (d). The furnishing of flagmen and other personnel as required to protect railroad traffic in connection with the work to be performed by the COMPANY and the STATE.
- (e). Engineering and inspection as set forth in Section 9.
- (f). Incidental work necessary to complete the items hereinabove specified.

The estimated cost of COMPANY's work set forth above is \$ 151,424 as shown on the detailed estimate attached hereto and made a part hereof.

Federal-Aid Policy Guide, Chapter I, Subchapter B, Part 140, Subpart I, Section 140.922(b) (23 CFR 140I) requires that the STATE certify that the work at the job site is complete, acceptable and in accordance with the terms of this Agreement. A representative of the STATE shall be present at the job site during construction to certify the work and to assure that all work and materials meet the requirements as set forth in the STATE's "Standard Specifications for Road and Bridge Construction" and supplements thereto. The COMPANY shall, therefore, give the STATE a 48-hour notice in advance of commencement of the work set forth in this Agreement.

SECTION 7. The STATE shall require its contractor(s) to perform his/her (their) work in accordance with the "Standard Specifications for Road and Bridge Construction" adopted January 1, 2002, and the "Supplemental Specifications" in effect on the date of invitation for bids. The STATE shall further required its contractor to obtain Umbrella Insurance Coverage with a limit of not less than \$4,000,000 each occurrence/\$4,000,000 aggregate. The coverage provided by this policy shall be at least as broad in scope as the underlying liability coverages specified for Statutory Workers' Compensation/Employers Liability policy, the Commercial General Liability policy and the Commercial Automobile Liability policy. The STATE further agrees to require its contractor to name, Transtar/EJ&E, their officers, directors, stockholders, employees and agents as additional insureds and shall be endorsed to provide coverage to these additional insureds on a primary basis without seeking contribution from any other insurance or self insurance available to Transtar/EJ&E in the Statutory Workers' Compensation/Employers Liability policy, the Commercial General Liability policy, the Commercial Automobile liability policy and the Commercial Umbrella policy. These policies shall also contain Severability of Interest clauses and Waivers of Subrogation in favor of Transtar/EJ&E, their officers, directors, stockholders, employees and agents.

Flagging costs shall be billed directly to the STATE as part of the COMPANY's force account work. As directed by the STATE's representative, the COMPANY shall provide daily or weekly reports of flagging hours to the STATE's representative at the job site for documentation and approval prior to submittal for payment.

SECTION 8. Subsequent to the award of any contract(s), and before any work is started on this project, a conference shall be held between the representatives of the STATE, the COMPANY, and the interested contractor(s), at a time and place as designated by the STATE's representative, for the purpose of coordinating the work to be performed by the several parties, and at which time a schedule of operations will be adopted.

SECTION 9. Each party will provide the necessary engineering and inspection for carrying out its work as herein set forth, and the costs for such services shall be borne by the STATE. The costs as incurred by the COMPANY for inspecting the work performed by the STATE as may affect its properties and facilities, or the safety and continuity of train operations, shall be borne by the STATE.

SECTION 10. The STATE shall require its contractor(s), before entering upon the COMPANY's right of way for performance of any construction work, or work preparatory thereto, to notify the authorized representative of the COMPANY for the occupancy and use of the COMPANY's right of way outside the limits of the structure, and to comply with his recommendations relative to the requirements for railroad clearances, operation and general safety regulations.

SECTION 11. The safety and continuity of operation of the traffic of the COMPANY shall be at all times protected and safeguarded, and the STATE shall require its contractor(s) to perform the work accordingly. Whenever the work may affect the safety of trains, the method of doing such work shall first be submitted to the COMPANY's authorized representative for his approval without which it shall not be commenced or prosecuted. The approval of the COMPANY's authorized representative shall not be considered as a release from responsibility, or liability for any damage which the COMPANY may suffer, or for which it may be held liable by the acts of the contractor(s), or those of their subcontractor(s), or their employees.

SECTION 12. If any loss, damage, destruction, injury or death occurs to any person or property as a result of or in the course of the performance by the COMPANY of its obligations under this Agreement, whether intentional or unintentional, the COMPANY agrees to indemnify and hold harmless the STATE from any and all liability of the STATE which may result from any such loss, damage, destruction, injury or death including all related costs and attorney's fees and expenses. The COMPANY shall not be obligated to indemnify and hold harmless the STATE from liability for injury or death proximately caused by the negligence of any employee or agent of the STATE.

SECTION 13. The STATE shall require its contractor(s), upon the completion of the work of such contractor(s), to remove from within the limits of the COMPANY's right of way all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of such contractor(s), and to leave the right of way upon which the said contractor(s) carried on operations in a neat condition, satisfactory to the authorized representative of the COMPANY.

SECTION 14. When the construction of this grade separation project is completed, the STATE shall maintain, at its expense, or by agreement with others provide for the maintenance of, the highway underpass structure, the retaining walls, the approaches, and all highway facilities.

In order to fulfill its maintenance obligation, the STATE shall have access to the structure and retaining walls at all times, for the performance of inspections, repair and maintenance. The COMPANY shall be notified whenever such activities affect its operations. All repair or maintenance work shall be performed in accordance with the applicable STATE's "Standard Specifications" in effect on the date the work is performed.

The COMPANY shall maintain, at its expense, its tracks and railroad facilities.

SECTION 15. The name plate, insignia or emblem of the COMPANY, if placed on or made a part of the structure, shall be of a size and design as shown on the approved plans. After the completion of the structure, the COMPANY shall not place, maintain, or display upon the structure, within view of the highway, any other permanent or temporary sign or marking bearing thereon any commercial advertising of the COMPANY'S lines, or of others. The COMPANY further agrees not to erect, nor grant permission to others to erect, any advertising signs that would be visible from the highway pavement on COMPANY'S property within the limits of the highway's right-of-way lines extended across the COMPANY'S property.

SECTION 16. The COMPANY shall keep an accurate and detailed account of the actual cost and expense as incurred by it, or for its account, in the performance of the work it herein agrees to perform.

The COMPANY, for performance of its work as outlined in Section 6 hereof, may bill the STATE monthly (in sets of four) for the costs and expenses incurred. The progressive invoices may be rendered on the basis of an estimated percentage of the work completed.

The COMPANY, upon the completion of its work, shall render to the STATE a detailed statement (in sets of four) of the actual cost and expense as incurred by it or for its account. After the STATE's representatives have checked the progressive invoices and the final statement and they have agreed with the COMPANY's representatives that the costs are reasonable and proper, insofar as they are able to ascertain, the STATE shall promptly reimburse the COMPANY for the amount of the final bill, or the estimated cost as shown in Section 6 whichever is less; such reimbursements, however, are subject to the provisions of Section 18 hereof.

The COMPANY shall maintain, for a minimum of 3 years after the completion of the contract, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract; the contract and all books, records, and supporting documents related to the contract shall be available for review and audit by the Auditor General and other STATE auditors; and the COMPANY agrees to cooperate fully with any audit conducted by the Auditor General and other STATE auditors and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this section shall establish a presumption in favor of the STATE for the recovery of any funds paid by the STATE under the contract for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

After the Federal or STATE representatives have audited the expenses as incurred by the COMPANY, including such amounts as may have been suspended from any previous payment, the STATE shall promptly reimburse the COMPANY for the retained amounts, less the deduction of any item(s) of expense as may be found by the Federal or STATE representatives as not being eligible for reimbursement. If the total of the item(s) of expense as may be found by the Federal or STATE representatives as not being eligible for reimbursement exceeds any retained amounts, then the COMPANY shall promptly reimburse the STATE for the overpayment.

SECTION 17. The COMPANY, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The COMPANY shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the COMPANY to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy deemed appropriate.

In the event any work is performed by other than COMPANY forces, the provisions of "an act regulating wages of laborers, mechanics and other workers employed in public works by the State, County, City or any public body or any political subdivision or by anyone under contract for public works" (Illinois Compiled Statutes, 820 ILCS 130/1) shall apply.

SECTION 18. The project herein contemplated shall be subject to all appropriate Federal laws, rules, regulations, orders and approvals pertaining to all agreements, plans, estimates, specifications, award of contract, acceptance of work and procedure in general. The STATE will reimburse the COMPANY as hereinbefore provided, for only such items of work and expense, and in such amounts and forms as are proper and eligible for payment.

SECTION 19. In compliance with Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 646, Subpart B, (23 CFR 646B) and supplements, which determines (among other things) the railway benefit and liability the construction of the railroad-highway grade separation project as herein proposed meets Classification (4) of Section 646.210(b), a category not considered as a benefit to the COMPANY, and no contribution by the COMPANY is required.

SECTION 20. In the event that delays or difficulties arise in securing Federal approval, or in acquiring rights of way, or in settling damages or damage claims, or for any other cause which in the opinion of the STATE render it impracticable to proceed with the construction of the project, then at any time before a construction contract is executed or actual construction is started, the STATE may serve formal notice of cancellation upon the COMPANY and this agreement shall thereupon become null and void.

SECTION 21. Obligations of the STATE under this Agreement shall cease immediately without penalty or payment should the Illinois General Assembly or the federal funding source fail to appropriate or otherwise make available funds for the project.

SECTION 22. At the time this Agreement was executed, there were funds available for the PROJECT; however, obligations assumed by the STATE under this Agreement shall cease immediately, without penalty or payment, should the Illinois General Assembly or the Federal Highway Administration fail to appropriate or otherwise make available funds for the Project.

SECTION 23. Under penalties of perjury, the COMPANY certifies that its correct Federal Taxpayer Identification Number (TIN) is 52-1601892 and the COMPANY is doing business as a corporation.

SECTION 24. The "Illinois Procurement Code Ethical Standards" (Attachment A) attached hereto ~~is~~ hereby made a part of this Agreement.

SECTION 25. This Agreement shall be binding upon the parties hereto, their successors or assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in triplicate counterparts, each of which shall be considered as an original, by their duly authorized officials as of the dates below indicated.

Executed by the COMPANY, this 30th

day of June, 2003.

Attest:

Lina Frost

ELGIN, JOLIET & EASTERN RAILWAY
COMPANY,

By: Raymond C. Balen

Executed by the STATE, this 31st

day of August, 2004.

STATE OF ILLINOIS, acting by and through
its Department of Transportation,

By: [Signature]

Director of Highways

MLP:C:\s\gen\wpdocs\agreemnt\403941.doc

ATTACHMENT A

STATE REQUIRED ETHICAL STANDARDS GOVERNING CONTRACT PROCURMENT

The certifications hereinafter made by the COMPANY are each a material representation of fact. The STATE may terminate the agreement if it is later determined that the COMPANY rendered a false or erroneous certification.

Bribery. Section 50-5 of the Illinois Procurement Code provides that: (a) no person or business shall be awarded a contract or subcontract under this Code who: (1) has been convicted under the laws of Illinois or any other state of bribery or attempting to bribe an officer or employee of the State of Illinois or any other state in that officer's or employee's official capacity; or (2) has made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct.

No business shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business, and: (1) the business has been finally adjudicated not guilty; or (2) the business demonstrates to the governmental entity with which it seeks to contract, and that entity finds that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer, or high managerial agent on behalf of the business as provided in paragraph (2) of subsection (a) of Section 5-4 of the Criminal Code of 1961.

For purposes of this Section, when an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and in accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct.

Every bid submitted to and contract executed by the State shall contain a certification by the COMPANY that it is not barred from being awarded a contract or subcontract under this Section. A COMPANY who makes a false statement, material to the certification, commits a Class 3 felony. The COMPANY certifies that it is not barred from being awarded a contract under Section 50-5.

Educational Loan. The Educational Loan Default Act provides that no State agency shall contract with an individual for goods or services if that individual is in default, as defined by Section 2 of this Act, on an educational loan. Any contract used by a State agency shall include a statement certifying that the individual is not in default on an educational loan as provided in this Section.

Bid Rigging/Bid Rotating. Section 33E-11 of the Criminal Code of 1961 provides: (a) that every bid submitted to and public contract executed pursuant to such bid by the State or a unit of local government shall contain a certification by the COMPANY that it is not barred from contracting with any unit of State or local government as a result of a violation of either Section 33E-3 or 33E-4 of the Code. The state and units of local government shall provide appropriate forms for such certification.

A COMPANY that makes a false statement, material to the certification, commits a Class 3 felony.

A violation of Section 33E-3 would be represented by a conviction of the crime of bid-rigging which, in addition to Class 3 felony sentencing, provides that any person

convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be barred for 5 years from the date of conviction from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation, and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent in behalf of the corporation.

A violation of Section 33E-4 would be represented by a conviction of the crime of bid-rotating which, in addition to Class 2 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be permanently barred from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent in behalf of the corporation.

The COMPANY certifies that it is not barred from contracting with the Department by reason of a violation of either Section 33E-3 or Section 33E-4.

International Anti-Boycott. Section 5 of the International Anti-Boycott Certification Act provides that every contract entered into by the State of Illinois for the manufacture, furnishing, or purchasing of supplies, material, or equipment or for the furnishing of work, labor, or services, in an amount exceeding the threshold for small purchases according to the purchasing laws of this State or \$10,000, whichever is less, shall contain certification, as a material condition of the contract, by which the COMPANY agrees that neither it nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act. The COMPANY makes the certification set forth in Section 5 of the Act.

Drug Free Workplace. The Illinois Drug Free Workplace Act applies to this contract and it is necessary to comply with the provisions of the Act if the COMPANY is a corporation, partnership, or other entity (including a sole proprietorship) which has 25 or more employees.

The COMPANY certifies that if awarded a contract in excess of \$5,000 it will provide a drug free workplace by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the COMPANY's workplace; specifying the actions that will be taken against employees for violations of such prohibition; and notifying the employee that, as a condition of employment on such contract, the employee shall abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (b) Establishing a drug free awareness program to inform employees about

the dangers of drug abuse in the workplace; the COMPANY's policy of maintaining a drug free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug violations; (c) Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the contract and to post the statement in a prominent place in the workplace; (d) Notifying the Department within ten (10) days after receiving notice from an employee or otherwise receiving actual notice of the conviction of an employee for a violation of any criminal drug statute occurring in the workplace; (e) Imposing or requiring, within thirty (30) days after receiving such notice from an employee of a conviction or actual notice of such a conviction, an appropriate personnel action, up to and including termination, or the satisfactory participation in a drug abuse assistance program approved by a federal, state, or local health, law enforcement, or other appropriate agency; (f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place; (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of the actions and efforts stated in this certification.

Delinquent Payment. The COMPANY certifies that it, or any affiliate, is not barred from being awarded a contract under 30 ILCS 500. Section 50-11 prohibits a person from entering into a contract with a State agency if it knows or should know that it, or any affiliate, is delinquent in the payment of any debt to the State as defined by the Debt Collection Board. Section 50-12 prohibits a person from entering into a contract with a State agency if it, or any affiliate, has failed to collect and remit Illinois Use tax on all sales of tangible property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act. The COMPANY further acknowledges that the contracting State agency may declare the contract void if this certification is false or if the COMPANY, or any affiliate, is determined to be delinquent in the payment of any debt to the State during the term of the contract.

Felony Convictions. The COMPANY certifies in accordance with 30 ILCS 500/50-10.5 that no officer, director, partner or other managerial agent of the contracting business has been convicted of a felony under the Sarbanes-Oxley Act of 2002 or of a Class 3 or Class 2 felony under the Illinois Security Law of 1953 for a period of five years prior to the date of the AGREEMENT. The COMPANY acknowledges that the DEPARTMENT shall declare the contract void if this certification is false.

Environmental Protection Act. The COMPANY certifies in accordance with 30 ILCS 500/50-12 that the COMPANY is not barred from being awarded a contract under this Section. The COMPANY acknowledges that the DEPARTMENT may declare the contract void if this certification is false.

:C\document12

document12

RT 2 YPASS UNDERGRADE @ LAKE JCH
RAILROAD COST ESTIMATE
20 MPH SHOOFLY ON EMBANKMENT

Summary	
Shoofly/Temporary Alignment	
Material	\$12,892
Labor	\$51,583
Equipment	\$12,041
Subtotal	\$76,516
Contingencies @ 10%	\$7,652
Total - Shoofly/Temporary Alignment	\$84,168
Permanent Alignment with New Bridge	
Material	\$19,098
Labor	\$24,536
Equipment	\$10,953
Subtotal	\$54,587
Contingencies @ 10%	\$5,459
Total - Permanent Alignment with New Bridge	\$60,046
Total Project Contingency Cost @ 5%	\$7,211
Total	\$151,424

RT 2 YPASS UNDERGRADE @ LAKE JCH
RAILROAD COST ESTIMATE
20 MPH SHOOFLY ON EMBANKMENT

Shoofly/Temporary Alignment				
Material (1 - 80' Track Panel)				
Qty	Unit	Description	Unit Cost	Total Cost
50	EA	Cross Tie, Grade 5 (7" x 9" x 8'-6")	\$50.00	\$2,500
160	FT	136# Rail	\$14.00	\$2,240
100	EA	Tie Plate	\$5.40	\$540
200	EA	Rail Anchor	\$0.80	\$160
400	EA	Spike	\$0.25	\$100
4	Pair	Rail Splice Bar	\$75.00	\$300
16	EA	Bolt w/Locknut (Rail Splice Bar)	\$3.00	\$48
600	Ton	Ballast, Limestone	\$7.00	\$4,200
1	Lot	Signal Bonds, Wires & Shunts	\$1,500.00	\$1,500
Subtotal				\$11,588
Sales Tax 6.25%				\$724
Additive 5%				\$579
Material Total				\$12,892
Labor				
Straight	OT	Description	Unit Cost	Total Cost
24	106	Track Foreman	\$20.34	\$3,722
24	236	RMO (Roadway Machine Operator)	\$18.32	\$6,925
80	254	Track Laborer	\$17.06	\$7,865
24	220	Crane Operator	\$19.76	\$6,995
60	20	Truck Driver	\$17.96	\$1,616
0	20	Welder Foreman	\$20.34	\$610
0	20	Welder	\$18.75	\$563
40	0	Signalman	\$20.03	\$801
Subtotal (Overtime (OT) unit cost is 1.5 times straight unit cost.)				\$29,097
Additive 77.28%				\$22,486
Labor Total				\$51,583
Equipment				
Qty	Days	Description	Unit Cost	Total Cost
1	5	Track Gang Truck	\$75.00	\$375
1	5	Air Compressor	\$65.00	\$325
1	5	Dump Truck	\$75.00	\$375
1	5	Payloader	\$350.00	\$1,750
1	3	Ohio Crane - 245	\$1,200.00	\$3,600
1	3	Tamper	\$1,160.00	\$3,480
1	3	Ballast Regulator	\$532.00	\$1,596
1	5	Signal Truck	\$108.00	\$540
Equipment Total				\$12,041
Summary				
Subtotal				\$76,516
Contingencies @ 10%				\$7,652
Total				\$84,168

RAILROAD COST ESTIMATE

20 MPH SHOOFLY ON EMBANKMENT

Permanent Alignment with New Bridge				
Material (2 - 80' Track Panels)				
Qty	Unit	Description	Unit Cost	Total Cost
320	FT	136# Rail	\$14.00	\$4,480
106	EA	Cross Tie, Grade 5 (7" x 9" x 8'-6")	\$50.00	\$5,300
212	EA	Tie Plate	\$5.40	\$1,145
400	EA	Rail Anchor	\$0.80	\$320
600	EA	Spike	\$0.25	\$150
6	Pair	Rail Splice Bar	\$75.00	\$450
24	EA	Bolt w/Locknut (Rail Splice Bar)	\$3.00	\$72
200	Ton	Ballast, Granite	\$15.00	\$3,000
6	EA	Boutet Weld Kit	\$125.00	\$750
1	Lot	Signal Bonds, Wires & Shunts	\$1,500.00	\$1,500
Total				\$17,167
Sales Tax 6.25%				\$1,073
Additive 5%				\$858
Material Total				\$19,098
Labor				
Straight	OT	Description	Unit Cost	Total Cost
24	36	Track Foreman	\$20.34	\$1,587
48	66	RMO (Roadway Machine Operator)	\$18.32	\$2,693
108	100	Track Laborer	\$17.06	\$4,401
34	48	Crane Operator	\$19.76	\$2,095
26	24	Welder Foreman	\$20.34	\$1,261
26	24	Welder	\$18.75	\$1,163
32	0	Signalman	\$20.03	\$641
Subtotal				\$13,840
Additive 77.28%				\$10,696
Labor Total				\$24,536
Equipment				
Qty	Days	Description	Unit Cost	Total Cost
1	3	Payloader	\$350.00	\$1,050
1	3	Ohio Crane - 245	\$1,200.00	\$3,600
1	3	Air Compressor	\$65.00	\$195
1	5	Track Gang Truck	\$75.00	\$375
1	3	Welder Truck	\$75.00	\$225
1	3	Tamper	\$1,160.00	\$3,480
1	3	Ballast Regulator	\$532.00	\$1,596
1	4	Signal Truck	\$108.00	\$432
Equipment Total				\$10,953
Summary				
Subtotal				\$54,587
Contingencies @ 10%				\$5,459
Total				\$60,046